

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 048

June 27, 1958

RESIDENCE: DETERMINATION OF STATUS

Syllabus:

Under the facts presented it is held that taxpayer and his wife became residents of California in 1942.

Taxpayer, domiciled in New York, was a sales representative for an American firm in Europe for a number of years. Because of the imminence of war, taxpayer and his wife left Europe in 1939 and arrived in California in April, 1940. Taxpayer had planned to return to Europe, but because of the war the European office was closed in 1940. From August, 1940 to January, 1941, taxpayer was in South America surveying that market. During this period his wife stayed with relatives in Los Angeles until December, 1940, at which time she leased an apartment in Los Angeles for six months. In January, 1941, a child was born to taxpayer's wife. In April, 1941, taxpayer and his family went to Vancouver, B.C., and while there lived in a rented residence. They returned to Los Angeles in November, 1941 and rented the previously occupied apartment on a month to month basis. In January, 1942 they purchased a home in Los Angeles and title was taken in the wife's name, it being alleged that their purpose was to make the property readily disposable when conditions permitted taxpayer to resume his former activities outside the U.S. In the spring of 1942 taxpayer spent a little over a month in New York and Washington, D.C., attending to personal matters. He returned to Los Angeles and in June, 1942, learned he had a serious heart condition which would prevent his engaging in his former activities. Taxpayer has lived in Los Angeles ever since. Advice is requested as to the date when taxpayer became a California resident.

Taxpayer's purpose in coming to California in April, 1940 was for merely a temporary business trip. When circumstances became such that he could not return to his European territory, he left to take care of other portions of his sales territory and did not return to California until January, 1941. During 1940, taxpayer's wife lived here for eight months with relatives and for one-half month in an apartment rented because of the imminent arrival of a child. Therefore, taxpayer's presence here for four and one-half months was merely for a temporary or transitory purpose as he meant to continue his activities as a field salesman and spent considerable time outside the State pursuant thereto. Taxpayer's wife remained in California because of the expected child and to await a station assignment for her husband. Furthermore, her living conditions here were of a temporary nature. In 1941, taxpayer and his family were in California for less than six months, the remainder of the time being spent in Vancouver, B.C. In view of their

relatively short stay in California during that year and with practically nothing else of a permanent nature to point to residence, they were not California residents during 1941.

With regard to 1942, we have the presumption of residence provided by Section 17016. Taxpayer's wife was here for the full year and taxpayer was only absent for a little over a month attending to personal business in New York. A furnished home was purchased in California in January, 1942 and taxpayer's contract with his employer had expired. Although in the early part of the year they may have had the intention of leaving when circumstances abroad permitted it, after the discovery of his heart condition taxpayer knew that he could no longer resume his past activities. Consequently, taxpayers were residents for the full year of 1942.